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To: Microsoft ATR
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Subject: comments on DOJ v. Microsoft

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Gentlemen,

I am a professional computer software developer, and I've been working with and around computers for as long as Bill Gates (we're a year apart in age). While I have not read the proposed settlement in detail, I have read many accounts in the technical press that seem to be in fair agreement, and I thought I'd register my comments.

In a nutshell, I think the proposed settlement is off-point and will have virtually no impact in the market place or to any useful extent with either consumers or end users. It's an attempt to compensate for market forces that were in effect several years ago and that might not be relevant today.

For what it's worth, here's my opinion.

I agree that Microsoft has created a monopoly. The issue before the courts was focused on products and product bundling; however, this is not the culprit. The monopoly that Microsoft has so effectively created really lies in a distribution channel that reaches over 90% of all computer users in the North American hemisphere, and probably a majority of ALL users worldwide. The problem with that sort of monopoly is that the monopoly holder has the absolute right to say what goes into that channel.

It's not that the products Microsoft chooses to bundle are good, bad, or indifferent. The problem is that the consumer is LOCKED OUT from EVER GETTING THE OPPORTUNITY TO CHOOSE ANY ALTERNATIVES!

Consider this: what if... 90% of telephone service was provided by Qwest? 90% of all grocery stores food distributors were owned by Safeway? 90% of all gasoline pipelines were owned by Mobil Oil? ... And, the owners were also the producers of 100% of the products that were stocked and sold to their customers -- meaning that all the services accessible by telephone (eg., long distance, voice mail, internet access, etc) were ALSO owned by Qwest; that 100% of the products found in a Safeway store were exclusively their in-house private label brands; that all the gasoline and oil available through Mobil gas stations was produced and owned by Mobil Oil.

It's kind of scary to think about, isn't it? You'd go to the grocery store looking for Quaker Brand Oatmeal, and you have to settle with some gloppy in-house brand because ... the price of the Quaker Oats product would be twice the cost of the in-house brand because the "house" would take a few tens of million dollars for the privledge of "bundling" it with their other products. (Look what they wanted to charge AOL just to advertise their internet service in Windows XP!)

What other company, distributor, news source, publisher, government, or ANYBODY exists ANYWHERE that has that kind of market penetration AND CONTROL? I cannot think of a single one, other than possibly the US Post Office!

What is the impact on me as a software developer? Well, it's rather difficult for me to gain access to this distribution channel. In fact, it's practically impossible. AOL couldn't get into the XP distribution without practically selling their soul; what chance does a smaller company have? Z-E-R-O.

That's the primary impact of this monopoly -- when somebody buys a Compaq or Dell computer, the only products they get exposure to are from Microsoft (and a few other Fortune 50 companies that can afford the advertising costs). And that's mainly because of contracts between Microsoft and the OEM manufacturers. Even if those contract terms are relaxed a bit, there's no way that smaller vendors are going to get to bundle their multimedia players and text editors with those systems!

The first automobiles were available in "any color you want, as long as it's black". That's ok when you're talking about a product market place with a few thousand or tens of thousands of customers. But today tens of millions

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of computers are sold each year. Nonetheless, as in Ford's time, consumers can get them outfitted with "any operating system you like, as long as it's from Microsoft". That's NOT a choice!

One measure of the settlement should be this: how do consumers choices change as a result?

Frankly, I fail to see how this situation will possibly change given the proposed remedies. Assuming the proposed settlement goes through, in a year or three, will the average consumer have any more choices to him as to what software gets bundled and/or installed on his computer? I really don't see how.

AT&T was broken into several smaller pieces in order to separate the local phone access from the long-distance networks. Now the so-called Baby Bells want to get back into long distance markets, and AT&T wants to get back into local access markets. What solution has been put into place? Local carriers can get into long distance when they've opened their local markets to some percentage of competing carriers, and AT&T can get into local markets when it can demonstrate that its opened it's markets to some percentage of competing carriers. That makes sense. The practical impact of that hasn't been very effective in the market place, but at least it's a start.

WHAT I'D LIKE TO SEE:

As part of the settlement agreement, Microsoft should be required to include installation-time access to third-party products with every release of their software. The qualifications should be that anybody can submit anything as long as it meets certain clearly defined and easily measured criteria. That means that if AOL thinks that users might want to get access to AOL at the time they install Windows XP, the only option Microsoft has is to say "send us a link to your web site".

One thing I believe is that Microsoft will claim that virtually ANYTHING is an "integral part" of the operating system if it suits their fancy. Rather than argue about it, I'd say "the proof is in the pudding". If Microsoft is including something in the release of one of their products, then they should allow third parties to submit similar products as well. In other words, if they want to claim that an Internet Browser is part of the OS, then they cannot say that other Browsers should not be include. Conversely, if somebody wants to bundle a word processor and Microsoft says that's not part of the OS, then they can refuse to include it. However, if someone wants to bundle something roughly equivalent to Notepad or Wordpad, which are acknowledged parts of the standard Windows operating environment, then Microsoft could not deny them trying to say that they compete with Word instead.

In order to facilitate this, I'd suggest the establishment of a web site that is used to promote third-party products that compete with things that Microsoft bundles directly in their products, and require Microsoft to modify their installer so that it connects to this web site at installation time and allows users to select among different tools available on the web site at that time. Some folks might not want to load the Windows Media Player, and might choose to install the WinAmp Media Player instead. Why not? Or, they could choose to load Netscape rather than Internet Explorer as their browser. If Microsoft wants to play games with the API so competitors' products don't work well, then play the same game as the phone companies -- they can update their browser as soon as at least one other browser has been tested to be "compatible" with the operating system. Put the onus on Microsoft to provide CLEAR CRITERIA to facilitate successful compatibility testing.

I'd also like to see something in the remedy that addresses the abysmal level of support that's currently available for Microsoft's products, primarily their OEM products. Microsoft says that part of the reason they

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discount the licenses sold to OEMs is because their contracts require the OEMs to provide support. However, most don't provide any useful level of support, typically pushing it off on their retailers. Very few retailers ever hire the expertise needed to support Microsoft's products well. This is relevant to the monopolistic practices issue because it gives Microsoft a way to dis-own support needs for a very large percentage of its customers. If Microsoft was required to provide even a minimal level of support for their products, they would have to raise their OEM prices enough that the OEMs would in fact be in a position to make a viable choice among different bundling options. Today the OEMs are simply prostitutes for Microsoft products that they bundle with their hardware simply because nobody else can afford to offer them better deals. OEMs cannot afford to support the software that they bundle with their computers, and there's a tacit agreement that retailers and "certified technicians" will take up the slack. The truth is, they don't. But Microsoft gets the benefit of the doubt and is allowed to continue underpricing their products to OEMs using this fraudulent strategy. I think that requiring Microsoft to publish a single, uniform, OEM Price List that only offers volume purchase discounts and that imposes certain specific support requirements would go a long way towards solving this problem. (For example, an OEM can get an additional discount by providing the 800# for their phone support help desk. No support desk, no discount. Conversely, Microsoft would be required to provide the support for those OEMs, hence justifying the higher OEM price.)

Finally, I like the option that several of the States have proposed that forces Microsoft to publish the source code for the core Windows operating system and utilities and require them to license it more openly. This would allow third-parties and even OEMs to use it to compose different configurations, much the way that Linux distributions are really different compositions of mostly the same code bases. It would eliminate most of the issues that have been keeping the OEMs hamstrung in their abilities to modify the boot-up processes of their machines, or shipping alternative browsers. It would also have a beneficial side-effect in that the OEMs would REALLY be required to support their products!

Thank you for taking the time to read this.

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